

### **REMARKS**

This responds to the Final Office Action dated December 10, 2008.

Claim 1 is amended; as a result, claims 1-7, 10-38, 41-148, and 150-152 are now pending in this application.

#### **The Non-Statutory Obviousness-Type Double Patenting Rejections**

Claims 1-3, 10-13 and 150-151 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-36, 38-74, 76-78, and 96-111 of copending U.S. application Serial No. 10/890,825 in view of Padua (U.S. Publication No. 2003/0204206; hereinafter "Padua"). Claims 1-3, 10-13 and 150-151 were also provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18, 32 and 33 of copending U.S. application Serial No. 11/220,397. Claims 1-3, 10-13 and 150-151 were further provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-41 of copending U.S. application Serial No. 11/276,077.

Applicant notes that U.S. application Serial Nos. 10/890,825, 11/220,397 and 11/276,077 have not yet issued and are pending. Therefore, a terminal disclaimer is not required in these matters until issuance of one of them. If a terminal disclaimer is required in any of Serial Nos. 10/890,825, 11/220,397 and 11/276,077, it can be requested by the Office before issuance of those matters.

#### **The 35 U.S.C. § 102 Rejections**

Claims 1-2, 13 and 150-151 were rejected under 35 U.S.C. § 102(a) and § 102(e) as being anticipated by Padua.

#### **Claim 1**

Claim 1 is amended to better describe the claimed subject matter.

Applicant respectfully traverses the rejection and submits that the cited portions of Padua do not provide the claimed subject matter. For example, Applicant is unable to find in the cited

portions of Padua, among other things, a system having an event detector configured to detect the predetermined cardiac condition from the sensed physiological signal and produce one or more condition parameters related to a degree of a predetermined cardiac condition; and a controller coupled to the sensor and electrically connected to a gene regulatory signal delivery device, the controller configured to produce a gene regulatory control signal, transmit the gene regulatory signal to the gene regulatory signal delivery device to trigger an emission of the regulatory signal in response to a detection of the predetermined cardiac condition, and quantitatively control the emission of the regulatory signal based on the one or more condition parameters related to the degree of the predetermined cardiac condition, as recited in claim 1.

Applicant respectfully requests reconsideration and allowance of claim 1.

*Claims 2, 13 and 150-151*

Applicant respectfully traverses the rejection. Claims 2 and 13 are dependent on claim 1, and claims 150-151 are dependent in part on claim 1, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 2, 13 and 150-151.

Applicant respectfully requests reconsideration and allowance of claims 2, 13 and 150-151.

*The 35 U.S.C. § 102/§ 103 Rejections*

Claims 10-12 were rejected under 35 U.S.C. § 102(a) and § 102(e) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Padua in view of Donahue et al. (U.S. Publication No. 2002/0155101, herein "Donahue").

Applicant respectfully traverses the rejection. Claims 10-12 are dependent on claim 1. Claim 1 is believed to be allowable for at least the reasons set forth above. It is believed that the addition of Donahue does not remedy the deficiency of Padua as discussed above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 10-12.

Applicant respectfully requests reconsideration and allowance of claims 10-12.

The 35 U.S.C. §103 Rejection

Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Padua.

Applicant respectfully traverses the rejection. Claim 3 is dependent on claim 1. Claim 1 is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claim 3.

Applicant respectfully requests reconsideration and allowance of claim 3.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 373-6959 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

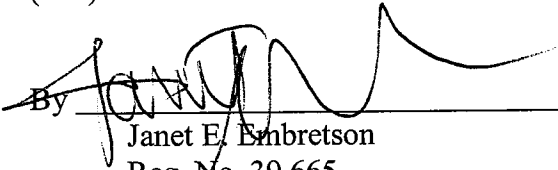
Respectfully submitted,

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Date

April 9, 2009

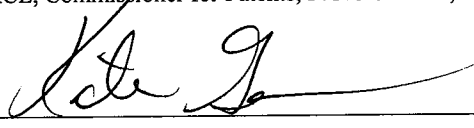
By

  
Janet E. Embretson  
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 9, 2009.

Kate Gannon

Name

  
Signature